

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

NORMAN BROWN, et al,)
)
 Plaintiffs,)
)
 vs.) Case No. 17-CV-4082
)
ANNE L. PRECYTHE, et)
al,)
)
 Defendants.)

VOLUME I

CONFIDENTIAL DEPOSITION OF JESSICA BLIESATH,
produced, sworn and examined on the 21st day of
December, 2017, between the hours of eight o'clock in
the forenoon and six o'clock in the afternoon of that
day, at the Missouri Attorney General's Office,
Broadway State Office Building, Jefferson City,
Missouri, before Kim D. Murphy, Certified Court
Reporter, within and for the State of Missouri.

A P P E A R A N C E S

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1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for the Plaintiffs and counsel for the
3 Defendants that this deposition may be taken in
4 shorthand by Kim D. Murphy, CCR, and afterwards
5 transcribed into typewriting; and the signature of the
6 witness is expressly waived.

7 * * * * *

8 JESSICA BLIESATH,
9 of lawful age, produced, sworn and examined on behalf
10 of the Plaintiffs, deposes and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MS. BREIHAN:

13 Q. Good afternoon.

14 A. Hi.

15 Q. Could you state and spell your name for the
16 record, please.

17 A. My name is Jessica Bliesath.

18 Do you need me to spell my first name, too?

19 Q. Just your last name.

20 A. B-l-i-e-s-a-t-h.

21 Q. And you understand that you're here for the
22 deposition today, correct?

23 A. Correct.

24 (Deposition Exhibit No. 1 was marked for
25 identification.)

1 BY MS. BREIHAN:

2 Q. I'm going to hand you what I'm going to
3 mark as Exhibit 1. It's a copy of a subpoena.

4 Have you seen this before today?

5 **A. No.**

6 Q. No. Okay.

7 If you turn to the last page of this
8 document there's eight bullet points of requests for
9 various records, documents, notes, et cetera.

10 Do you recall seeing these requests before
11 today?

12 **A. Just a verbal of things to provide.**

13 Q. Okay.

14 **A. I didn't see the physical document, but,**
15 **yes, I was aware of the request.**

16 Q. And throughout today, I'm going to be
17 asking you questions. And my goal is not to ask
18 questions about -- or not to try to get into
19 confidential communications you had with your attorneys
20 who are here today.

21 You're represented by counsel here today,
22 correct?

23 **A. Yes.**

24 Q. To the extent you had confidential
25 communications with them about this case, you know, I'm

1 not -- my intent is not to ask questions about that.

2 **A. Okay.**

3 Q. But you did produce documents in response
4 to the subpoena, correct?

5 **A. Yes.**

6 Q. And those documents have been produced by
7 your attorneys?

8 **A. Yes.**

9 Q. And they've been Bates-stamped by your
10 attorneys Bliesath 1 through 51.

11 Have you ever been deposed before?

12 **A. No.**

13 Q. I'm sure your attorneys did a wonderful job
14 of preparing you for today, but I'll just go ahead and
15 walk through a couple of ground rules.

16 I see Mr. Crane shrug over there. Just so
17 we're on the same page, my job -- I represent the
18 plaintiffs. My job is to ask some questions that are
19 relevant to the lawsuit that we have pending, and then
20 your job is to answer them truthfully to the best of
21 your ability.

22 You just took an oath, so you're testifying
23 under the penalty of perjury just like you were in
24 court; do you understand that?

25 **A. Yes.**

1 Q. And everything you're saying is being
2 written down today. So it's important to keep your
3 answers verbal. The court reporter can't take down
4 head nods, or uh-huh's or huh-huh's. Just try to keep
5 your answers verbal, please.

6 **A. Okay.**

7 Q. Sometimes, as you get comfortable, that
8 might happen. We'll try to remind you, or your
9 attorney will remind you.

10 We should also try not to speak over one
11 another.

12 There will be times where you know where
13 I'm going with a question. And just human nature, you
14 start to answer it already. If you could, just try to
15 wait till I'm done with a question. I'll try to wait
16 before I ask another question until you answer.

17 **A. Okay.**

18 Q. If you don't understand a question I ask,
19 just let me know. I'll try to clarify it for you. And
20 if you don't hear a question, also let me know, I'll
21 repeat it, or the reporter can read it back, okay?

22 **A. Okay.**

23 Q. If you answer a question, I'm going to
24 assume you understood it, okay?

25 **A. Absolutely.**

1 Q. If you need any breaks -- I don't think
2 we'll be going too long for today, given it's already
3 late in the day -- but if you do need a break, just let
4 us know. I'd just ask that you answer the question
5 before you break, okay?

6 **A. Sure.**

7 Q. So what did you do to prep for today's
8 deposition?

9 **A. I fulfilled the requests that were given.**
10 **And reread the hearing report that I wrote. And**
11 **reviewed the complaint.**

12 Q. And you mentioned a hearing report that you
13 wrote.

14 What are you referring to there?

15 **A. This document you guys should have copies**
16 **of.**

17 Q. And that's the prehearing report for
18 Sidney Roberts, correct?

19 **A. Correct.**

20 Q. And you say you authored that?

21 **A. Yes.**

22 Q. You also reviewed the complaint?

23 **A. Yeah.**

24 Q. Did you review any other documents?

25 **A. Not other than what I printed out to**

1 provide. And I didn't thoroughly read through each of
2 those documents. I just looked for relative documents
3 and sent them.

4 Q. I understand.

5 Did you speak with anyone other than your
6 attorneys to prepare for today?

7 A. Legal counsel, Department of Corrections.
8 But that was just to confirm what I could provide and
9 not provide.

10 Q. So are there documents that were responsive
11 to those requests in the subpoena but that you did not
12 produce?

13 A. No. It was just mainly the prehearing
14 report. We didn't know if it was already made
15 available or not.

16 Q. Did you do anything else to prepare for
17 today other than what you've just testified to?

18 A. No.

19 Q. It looks like one of the records that you
20 produced is a copy of your resumé that's been marked as
21 Bliesath 50 through 51, correct?

22 A. Yes. That's my most recent one. I didn't
23 adjust it to present day.

24 Q. Do you know about when it was last updated?

25 A. 2014, probably.

1 Q. It also looks like you were seeking
2 employment with the federal government?

3 A. Yeah. I had applied as a United States
4 probation officer.

5 Q. What's your highest level of education?

6 A. I have a master's degree in sociology and
7 criminal justice.

8 Q. And you obtained that in 2013; is that
9 correct?

10 A. I believe so, yes. December of '13.

11 Q. In conjunction with you obtaining your
12 master's degree from Lincoln University, did you take
13 any courses in child psychology?

14 A. I would have to review my transcripts, but
15 I don't recall. We did juvenile justice, was one of
16 them, I believe. Or it was a juvenile course. I don't
17 remember the exact name of the course.

18 But without reviewing the exact course
19 titles, I don't recall the exact classes.

20 Q. Okay. So do you recall taking any classes
21 on adolescent development?

22 A. I don't recall, no.

23 Q. Do you recall taking any classes, in
24 getting your master's, on evidence-based penological
25 practices?

1 A. I don't recall that specific terms being
2 used in the course titles, but I can obtain those if I
3 need to. It's been a little while. I don't remember
4 the exact course titles.

5 Q. And what does that phrase mean to you,
6 evidence-based penological practices?

7 A. To me, it would mean based on a series of,
8 you know, evidence -- evidence or circumstances or
9 something or basing a decision off of the evidence
10 that's presented in front of you.

11 That's what it would mean to me.

12 Q. Something more than just like a gut
13 feeling?

14 A. Right.

15 Q. And you mentioned that one of the sort of
16 areas or perhaps courses that you remember taking while
17 getting your master's degree was on the topic of
18 juvenile justice, correct?

19 A. Either in my master's program or my
20 bachelor's program.

21 Q. What do you recall from that?

22 A. I don't. It would be limited. If it was
23 during my bachelor's studies, that would have been even
24 longer ago. So I don't know specifically what I recall
25 from that class.

1 Q. Got it.

2 Are you familiar with the U.S. Supreme
3 Court Decision Miller versus Alabama?

4 **A. Only limited.**

5 Q. That decision came down in June of 2012, so
6 it looks like while you were getting your master's.

7 Do you recall any discussion during your
8 coursework at Lincoln University when obtaining your
9 master's about Miller versus Alabama?

10 **A. I do not.**

11 Q. And do you have any professional
12 certifications or licenses?

13 **A. I was certified to -- let me look at my**
14 **training records. I believe I sent them over. I did**
15 **do a certification in anger management instruction.**

16 Q. So Bliesath 40 through 49?

17 MR. CRANE: I'll give you my copy.

18 THE WITNESS: Outside of the general
19 training that's listed on here, I think the only
20 certification would be as an anger management
21 instructor. A certified anger management instructor.

22 BY MS. BLIESATH:

23 Q. And what did you have to do to obtain
24 certification as an anger management instructor?

25 **A. We attended a training course, an**

1 **instructional course, through the Department.**

2 Q. So that was put on by the department's
3 internal training staff?

4 A. I think it was somebody through Department
5 of Mental Health, if I remember correctly.

6 Q. I want to turn back to your resumé. Looks
7 like in 2007, after you graduated with your bachelor's,
8 you started working as a probation and parole officer,
9 correct?

10 A. I worked first as an office support
11 assistant. And then six months later as a Probation
12 and Parole officer.

13 Q. And just for ease of reference in the
14 record, I'm going to mark your resumé as Exhibit 2.
15 (Deposition Exhibit No. 2 was marked for
16 identification.)

17 BY MS. BREIHAN:

18 Q. So Exhibit 2 is Bliesath 50 and 51.
19 Your first position with the Division of
20 Probation and Parole was essentially as a receptionist,
21 correct?

22 A. Correct.

23 Q. Was that here in the Central Office?

24 A. It was at the District 27 Probation and
25 Parole office, which is local to Jefferson City, but

1 **not Central Office.**

2 Q. Understand.

3 And then after six months you became a
4 state Probation and Parole officer II, correct?

5 A. A I and then a II. It's like a step.

6 Q. Step-up?

7 A. Like, you're a probation officer I for a
8 period of time, and then you become -- after your
9 probationary period and such you become a II.

10 Q. How long were you a probation and parole
11 officer I?

12 A. I don't recall the exact time frame. But I
13 want to say it was possibly between nine and -- nine or
14 18 months. It's a step process. It would be in
15 our -- in the department's records.

16 Q. Did you receive any training when you first
17 started as a probation and parole officer I?

18 A. Whatever is listed on our -- on my training
19 records would be -- that were relative to the
20 dates would be the trainings that we were given.

21 Q. Do you recall what training you received?

22 A. I don't recall without being able to look
23 at it.

24 (Deposition Exhibit No. 3 was marked for
25 identification.)

1 BY MS. BREIHAN:

2 Q. Okay. So this document I will mark as
3 Exhibit 3, Bliesath 40 through 49.

4 So this is a -- looks like a training
5 record for you from when you first started with
6 Probation and Parole through the current date, correct?

7 A. Yes.

8 Q. So this would contain any training that you
9 received over your tenure with Probation and Parole,
10 correct?

11 A. It should, yes.

12 Q. And how did you generate or obtain this
13 report before today?

14 A. I contacted our training representative and
15 indicated I needed a copy of my full training record.

16 Q. Who's your training representative?

17 A. I emailed Shelly Graph. She's our -- the
18 person we're supposed to contact. I assumed she could
19 provide this for me.

20 Q. As a probation and parole officer, is
21 there, like, an annual training requirement you have to
22 meet?

23 A. We have to meet the departmental's
24 40 hours. When I first started it was 40 hours of
25 continual training. Then it went to 30 hours. And

1 **then it went back to 40 hours annually.**

2 Q. And is there any sort of requirement
3 regarding what portion of that needs to be spent on
4 certain topics or issues?

5 **A. No. There is mandatory training. We do**
6 **mandatory safety training. And discrimination,**
7 **harassment, and retaliation training every year.**

8 Q. So does the mandatory training count toward
9 the 40 hours?

10 **A. I believe so, yes.**

11 Q. And then whatever is left over that, after
12 that mandatory training, is it up to you to decide what
13 you want to attend to satisfy that 40-hour requirement?

14 **A. Yes. Unless somebody requests we go to**
15 **something specific.**

16 Q. Has that happened in the last five years?

17 **A. No.**

18 Q. Is there ever a time where you have asked
19 to receive training on a certain issue and been told
20 you're not allowed to do that?

21 **A. No.**

22 Q. Has there ever been a time where you asked
23 to participate in a certain workshop training or
24 session you told you can't because of monetary
25 resources?

1 **A. Not that I recall, no.**

2 Q. So you're currently a probation and parole
3 officer II?

4 **A. Yes.**

5 Q. Can you describe -- you've been
6 that -- let's do the math. If you started as a
7 P & P I in 2007, you were there nine to 18 months, so
8 by 2009 you were a P & P II, correct?

9 **A. Yes.**

10 Q. Am I using the right acronyms?

11 **A. We just use PO. It's different everywhere.**

12 Q. Okay. So can you describe for me what your
13 duties are as a PO II?

14 **A. I'll refer to my resumé.**

15 Main functions are to interview and assess
16 incarcerated offenders, and assist the parole board
17 when they're eligible for release in obtaining a viable
18 home plan. And making certain they understand what's
19 required of them while on supervision in the community.

20 Q. Okay. So how do you assist in making and
21 maintaining a viable home plan?

22 **A. When we work towards home plans -- some**
23 **offenders provide us with home plans. And I'll discuss**
24 **with them if they feel as though that's a good place**
25 **for them to go. Their own personal opinions on that.**

1 And then as long as they would meet the
2 criteria that, you know, we would have set in place,
3 which would be that, obviously, they know the person,
4 you know, whatever is physical there. You know,
5 there's no drugs or alcohol in the home. No weapons in
6 the home. Then we move on from that point.

7 If they do not have a home plan, then we
8 assist with providing them applications to various
9 places. I'll have them send the applications back to
10 me, and I'll fax them or email them to the facilities
11 so they don't have to use resources they may not have,
12 stamps, or something like that.

13 Then we'll assist with home plans in that
14 fashion only. We've made phone contacts with people.
15 Whatever their needs are, we do our best to meet those
16 for home plans.

17 Q. Your resumé states that you do case
18 management on an as-needed basis. What does that
19 entail?

20 A. I would say that would be outside of, you
21 know, we have phone calls that we get from other
22 people, employees in the department, like, at our
23 facilities that may have questions, or may have issues
24 that they want, you know, our feedback on.

25 It could be various things. It's not very

1 **specific. It could be a range of things.**

2 Q. Then it states you also interview and
3 assess inmates for purposes of parole consideration;
4 is that fair?

5 **A. Yeah.**

6 Q. What percentage of your time do you spend
7 interviewing and assessing inmates for purposes of
8 parole consideration?

9 **A. We do file preparation before we meet with**
10 **the offenders. And generally my interviews could last**
11 **anywhere from one to two hours.**

12 Q. So what percentage of your time on a weekly
13 basis would you say is spent doing file preparation
14 before you meet with an inmate?

15 **A. For one specific offender? Or just in**
16 **general?**

17 Q. Cumulatively.

18 **A. I would say 80 percent of our job, our**
19 **time, is spent doing file preparations, interviewing**
20 **and typing the hearing reports.**

21 Q. Okay.

22 **A. And the interview process, 80 percent of**
23 **our time.**

24 Q. Who's your current supervisor?

25 **A. Scott Berkbigler.**

1 Q. And what's his title?

2 A. District administrator II.

3 Q. Is he also stationed at Jefferson City
4 Correctional Center?

5 A. Yes, he is.

6 Q. Are there any other institutional -- strike
7 that.

8 So your resumé describes you as a state
9 probation and parole officer II. Is that also referred
10 to as an institutional parole officer?

11 A. It is the same thing. We are just housed
12 in the institution, whereas we have counterparts in the
13 field office. So we're all the same job title, just
14 different locations.

15 Q. Are there other institutional parole
16 officers at Jefferson City Correctional Center?

17 A. Yes. One other.

18 Q. Who's that?

19 A. Brad Denton.

20 Q. And how do you and Mr. Denton determine who
21 works with which inmates?

22 A. We have -- our caseloads are divided by
23 their DOC numbers. The last digit of the DOC number
24 determines whose caseload.

25 Q. So, for example, he takes even or odd?

1 A. I have 1 through 4, and he has 5 through 9.
2 The last digit.

3 Q. So you had mentioned that part of what you
4 do, 80 percent of your time is spent doing file prep
5 before interviewing an offender, or typing up the
6 prehearing report, correct?

7 A. Uh-huh.

8 Q. Can you walk me through what file prep you
9 do before meeting with an inmate?

10 A. Sure. We get their actual classification
11 file. Some of our offenders have cases that are
12 obviously a lot older than the systems that we work
13 with. And so there will be hard copy documents that
14 may not be in our system. So we utilize those.

15 We go through the classification files.
16 Again, if there's limited information on the cases,
17 we'll Google search it and find lawsuits and such that
18 have case information. Or newspapers.

19 We also utilize our system, the records
20 that are in our systems. Case.net we use also. And
21 then our interview with the offenders.

22 Q. So the file prep, that's putting together a
23 parole file for an inmate, what are you doing? What
24 are you preparing? What's the file you're preparing?

25 A. The prehearing report. We -- basically

1 it's -- we go into an interview with knowledge of who
2 we're talking to. And the information that we have.
3 And then we utilize that while we're interviewing the
4 offender.

5 Q. So you're gathering information during this
6 file prep stage in order to guide or assist in the
7 prehearing interview; is that correct?

8 A. Correct.

9 Q. And do you refer to this file as, like, the
10 prehearing file or anything like that?

11 A. No. I don't know what you mean by that.

12 Q. I didn't know if there was a term for it.

13 A. We have a worksheet that we utilize.

14 Q. Okay.

15 A. It's basically meant -- it's a guide for us
16 to utilize.

17 Q. Before you get to the worksheet, I just
18 want to focus on the prep stage, as you talked about
19 gathering the classification file, maybe doing a Google
20 search, accessing Case.net, and you pull that
21 information and you have that in a file in front of
22 you, correct?

23 A. Not necessarily in a file, no.

24 Q. So what do you do with that information
25 once you gather it?

1 A. Me, I will sometimes handwrite it. Like,
2 information. Or print it out, and it will just be like
3 this in a packet. I don't physically place it in a
4 file and label and keep the file. It's not -- it's
5 not -- it would be more so like a referral.

6 Q. So if you print or handwrite any notes
7 during this file prep stage what do you do with those
8 notes?

9 A. We have -- we were not given any
10 instructions prior to this. I would generally keep
11 mine for approximately two months. And that would be
12 in the event that there were questions about the
13 prehearing report, or at the time of the hearing, that
14 they needed us to refer back to something. And then
15 beyond that we shred the document.

16 We have since then been instructed not to
17 do so. Recently. We just take that information on the
18 worksheet and put it in the prehearing report.

19 Q. So other than the classification file, a
20 Google search or Case.net, do you go anywhere else to
21 prepare for the prehearing interview?

22 A. The records that are in our system also.
23 There's some stuff in OPT II, MO-CIS, and FileBound
24 that is also accessible to us.

25 Q. Are their files from OPT II, MO-CIS, or

1 FileBound that are not in the classification file?

2 A. Sometimes. Usually depends on the age of
3 the document.

4 Q. So what kind of things might be in MO-CIS,
5 OPT II or FileBound?

6 A. Since a lot of it is entered by people,
7 like, MO-CIS, we may find certificates that the
8 offenders have earned that may or may not be elsewhere.
9 Unfortunately we can find things in different areas.

10 Sometimes it's cross-posted. It just
11 depends. It would be a variety of things.

12 Q. But there's no centralized program or
13 database where you could find everything essentially
14 that you're looking for on this inmate?

15 A. Sometimes there is and sometimes there is
16 not. Like I said, it depends on -- generally it
17 depends on how long the offender's been incarcerated.
18 Because previously, our system, our system only goes
19 back so far for, like, the digital copies. And so
20 there may be things that are in FileBound, for
21 instance, that are not in our current system.

22 Sometimes they are in the classification
23 file also. But that's not necessarily a guarantee.
24 That's why we look in all the locations.

25 Q. So it's your practice in every instance to

1 look in the classification file, MO-CIS, OPT II, and
2 FileBound?

3 A. Yes.

4 Q. And would you make a note when you'd done
5 that so you know for reference sake?

6 A. Not necessarily. No. I've done it for so
7 long it's just practice for me. I just do it each
8 time.

9 (Deposition Exhibit No. 4 was marked for
10 identification.)

11 BY MS. BREIHAN:

12 Q. And you talked about a worksheet. I'll go
13 ahead and give you what I've marked as Exhibit 4.

14 Is this the worksheet that you use to
15 conduct the prehearing interview?

16 A. Correct.

17 MR. CRANE: I object for the record. It's
18 not clear if you mean every prehearing report or only
19 certain prehearing reports.

20 MS. BREIHAN: Got it.

21 Unless you're instructing her not to
22 answer, I would ask that you not make speaking
23 objections. And if you're confused by a question, just
24 let me know.

25 So in light of your counsel's objection, do

1 you need to clarify your response to that question at
2 all?

3 THE WITNESS: Yes. This is the worksheet
4 that we utilize for offenders that are juveniles
5 serving life without sentences.

6 BY MS. BREIHAN:

7 Q. How is it different from a non-juvenile
8 life without prehearing interview?

9 A. Without having the exact other worksheet in
10 front of me, I can't speak of specifics, other than the
11 information on this worksheet specifically addressed
12 the statute information. And it looks like what would
13 be, like, the highlighted sections touching on their
14 age and maturity and such.

15 Q. And what is your understanding of why
16 there's this worksheet for juvenile offenders serving
17 life without parole?

18 A. It would be based off of the bill that was
19 passed. And taking note of the age of the offender at
20 the time of the offense. And the different factors
21 that are being considered.

22 Q. What's the bill you're referring to?

23 A. Senate Bill 590.

24 Q. And what's your understanding of
25 Senate Bill 590? What's the impact of that bill?

1 **A. Can you clarify that?**

2 Q. What's your understanding of what it did?
3 What the bill did or said?

4 **A. It acknowledged that these were juvenile**
5 **offenders at the time they committed their offenses.**
6 **And now they are being considered for release, based on**
7 **the fact that they were juveniles at the time, because**
8 **of their maturity and so forth.**

9 Q. And do you recall discussing Senate Bill
10 590 with anybody, whether it was other parole officers
11 or anyone else?

12 **A. Only through the email correspondence that**
13 **we were provided.**

14 Q. You're talking about the emails you brought
15 with you today?

16 **A. Yeah.**

17 Q. Do you recall when you first saw this
18 Exhibit 4, this juvenile life without parole worksheet?

19 **A. Do I recall when I first saw it?**

20 Q. Yes.

21 **A. It would be following the notification that**
22 **these offenders would about able to petition for a**
23 **hearing and such.**

24 **I don't recall the exact date, no.**

25 Q. I think there's an email that you brought

1 with you today that might refresh your recollection.

2 So it looks like there's an August 24th,
3 2016 email from Michelle Kasak to a bunch of
4 individuals, including Scott Berkbighler, attached to
5 this worksheet, and then Scott forwarded it to you and
6 Brad Denton on that same date.

7 Do you see that email?

8 **A. Yes.**

9 Q. Does that refresh your memory about when
10 you would have first seen this worksheet?

11 **A. Yes. Approximately August 2016.**

12 Q. Did you discuss this worksheet with
13 Scott Berkbighler?

14 **A. I don't recall having a conversation, no.**

15 Q. Did you discuss it with Brad Denton?

16 **A. We didn't probably discuss it until we had
17 our first occurrence.**

18 Q. Your first hearing?

19 **A. Yeah.**

20 Q. Where you needed to use it?

21 **A. Yeah. I don't recall having a lengthy
22 conversation with him about it, no.**

23 Q. What do you recall from that conversation?

24 **A. Just that we have to use a specific
25 worksheet for the completion of it.**

1 Q. Did you ever receive any training on how to
2 use this worksheet?

3 **A. No. Not to my knowledge.**

4 Q. Did you ever have any questions on how to
5 use this worksheet?

6 **A. No.**

7 Q. Do you know, who's Michelle Kasak?

8 **A. She is our regional administrator.**

9 Q. Would she be Mr. Berkbigler's supervisor?

10 **A. Correct.**

11 Q. Do you know who created this worksheet?

12 **A. I do not.**

13 Q. And this is the worksheet you use every
14 time you conduct a prehearing interview with a juvenile
15 serving life without parole; is that correct?

16 **A. Correct.**

17 Q. Other than this worksheet, do you have any
18 written guidance on how to conduct those prehearing
19 interviews?

20 **A. For those specific offenders?**

21 Q. Yes.

22 **A. No.**

23 Q. Did you use this worksheet -- you already
24 testified today that you prepared the prehearing report
25 for Sidney Roberts, correct?

1 **A. I don't know that we specifically pointed**
2 **that out, but, yes, I did do his prehearing report.**

3 Q. And do you recall having a prehearing
4 interview with Sidney Roberts?

5 **A. Yes.**

6 Q. Did you use this juvenile life without
7 parole, PHR worksheet, during your prehearing interview
8 with Mr. Roberts?

9 **A. Yes.**

10 Q. Was it your practice at the time when you
11 were doing a prehearing interview, and using this
12 worksheet, to make notes on the worksheet itself?

13 **A. Yes.**

14 Q. Would you also make notes separately?

15 **A. Not generally, no.**

16 Q. And what would you do with your notes on
17 the worksheet after the interview with the inmates?

18 **A. We then would put it into the hearing**
19 **report.**

20 Q. And then once you drafted the prehearing
21 report, what would you do with the worksheet?

22 **A. With the worksheet, we -- I keep mine for**
23 **approximately two months and then I dispose of them.**
24 **There's never been an instance where we had to refer**
25 **back to them.**

1 Q. Did you ever give an inmate a copy of the
2 worksheet?

3 **A. No.**

4 Q. And then after you use your draft for the
5 prehearing report, what happens to the draft of the
6 prehearing report?

7 **A. It's turned in to our supervisor for**
8 **review.**

9 Q. And that's Scott Berkbighler?

10 **A. Yes.**

11 Q. And he reviews it?

12 **A. Correct.**

13 Q. And gets back to you?

14 **A. Yes.**

15 Q. And do you recall him reviewing
16 Sidney Roberts' prehearing report that you drafted?

17 **A. Not specifically. But he would have had to**
18 **if it was finalized.**

19 Q. Do you recall him having any changes or
20 edits to the draft?

21 **A. No.**

22 Q. How common is it for him to have changes or
23 edits to prehearing reports that you draft?

24 **A. Not very often.**

25 Q. And so after Mr. Berkbighler reviews a

1 prehearing report you drafted, what happens next to the
2 report?

3 A. It's given to our clerical staff and they
4 final form the report.

5 Q. What does that mean?

6 A. Just takes a draft and makes it a final
7 document. This document.

8 Q. And then what happens with the report once
9 it's in final form?

10 A. It waits there. I mean, nothing happens to
11 it until the actual hearing.

12 Q. So it stays --

13 A. It's printed and signed and stays in the
14 file.

15 Q. So it stays at the institution until the
16 parole hearing?

17 A. It's not really a physical -- I mean,
18 there's a physical copy of the report, but the report
19 is accessible in OPT II in the computer system.

20 Q. Okay. An unsigned copy could be available
21 in the system, in OPT II, correct?

22 A. Yes.

23 Q. Would it be available in FileBound?

24 A. I'm not certain on that.

25 Q. Would it be available in MO-CIS?

1 **A. No.**

2 Q. Would it be available in the inmate's
3 classification file before the hearing?

4 **A. No. I'm not sure with FileBound. I know**
5 **for certain not the others.**

6 Q. When you're doing your file prep, when you
7 actually interview the offender, do you calculate a
8 salient factor score?

9 **A. We calculate salient factor scores for the**
10 **majority of offenders, but not all.**

11 Q. What is a salient factor score?

12 **A. What is it?**

13 Q. Uh-huh. What is it? What does that mean?

14 **A. It utilizes -- it's an actual score. I**
15 **think the range is negative -- I wanna say -- I'm not**
16 **sure of the exact lowest range -- up to, like, a**
17 **positive 9 or 10, or something like that. And it's a**
18 **risk assessment based off of various different**
19 **variables. I don't know all. I think it's, like,**
20 **13 or 14 variables.**

21 Q. And what is it meant -- you said it is
22 meant to assess risk?

23 **A. Yes.**

24 Q. Risk to re-offend if the inmate were
25 released; is that fair?

1 A. I don't know about re-offending. It's just
2 a -- the different factors. I don't know exactly what
3 the risk they're stating is being determined, whether
4 it's re-offending or other things.

5 But it's, like, their age, and substance
6 abuse history, and recidivist-related crimes. Things
7 like that.

8 Q. And you said that you use the salient
9 factor score for the majority of inmates, but not all
10 of this them, correct?

11 A. That's correct.

12 Q. Which inmates do you not use the salient
13 factor score them for?

14 A. Offenders serving 30 years -- over
15 30 years.

16 Q. And why is that?

17 A. It's our policy. I don't have the specific
18 why to that. I do not know.

19 Q. No one's explained that to you?

20 A. No. I mean, it's just stated that if they
21 are serving a term of over 30 years a salient factor
22 score is not calculated.

23 Q. Have you ever asked anyone why that is?

24 A. No.

25 Q. Aside from the salient factor score, are

1 there any other risk assessment tools that you use in
2 your job as a P oh?

3 **A. No not as an institutional parole officer,**
4 **no.**

5 Q. Are there risk assessment tools that a
6 parole officer might use out in the field?

7 **A. To my understanding, yes.**

8 Q. But there's not any other risk assessment
9 tools that are used when you're evaluating someone for
10 release, correct?

11 **A. Correct.**

12 Q. And because of all the juvenile offenders
13 impacted by Senate Bill 590 serving life without
14 parole, I assume, then, the salient factor is not used
15 for them, correct?

16 **A. That is correct.**

17 Q. So what risk assessment tool is used to
18 evaluate the juvenile life without parole inmates for
19 release?

20 **A. I'm not aware of a specific tool.**

21 Q. What evidence-based practices are used to
22 assess their readiness for release?

23 **A. We utilize whatever is noted in the**
24 **worksheet as far as program participation. Conduct.**
25 **And things of that nature.**

1 Q. When you met with Mr. Roberts for his
2 prehearing interview was that the first time you'd ever
3 met with him?

4 A. I believe so, yes.

5 Q. And how long did you meet with him?

6 A. I don't recall the exact time, but
7 generally my interviews take one to two hours. Some
8 longer, some shorter.

9 Q. And aside from what's in the worksheet, is
10 there anything else that you talk with the inmate about
11 during that prehearing interview?

12 A. If they have questions, I'll answer their
13 questions to the best of my ability.

14 Q. Do you talk to an inmate at any point in
15 time about whether or not they are hearing -- their
16 hearing will be in person or whether by video
17 conference?

18 A. No. Our hearings are all held in person.
19 It's not like that at every facility, but it is at
20 ours.

21 Q. So inmates at Jefferson City Correctional
22 Center do not have an option to have their hearing by
23 video conference?

24 A. Yeah. Ours are all done in person. I
25 believe it's a location thing.

1 Q. Because you're probably the closest --

2 A. We're centrally located.

3 Q. Do you talk with an inmate during that
4 prehearing interview about the option to have a
5 delegate at the hearing?

6 A. Yes.

7 Q. What do you tell an inmate?

8 A. They're allowed to have one person there
9 on -- to spoke on their behalf at hearings.

10 Q. Do you tell them anything else?

11 A. Only if they have questions about it.

12 Q. And what's your understanding of the role
13 of this one-person delegate?

14 A. It is a support person for the offender.

15 Q. Are there restrictions, to your knowledge,
16 on what that delegate can speak about at the hearing?

17 A. At the hearing, we've been instructed what
18 support they can provide to the offender upon their
19 release.

20 Q. Instructed by whom?

21 A. Supervisory staff. I mean, that's just the
22 understanding we've been told the delegate's role is.

23 Q. Do you remember who specifically told you
24 that?

25 A. I do not.

1 Q. Or when?

2 A. (The witness shook her head.)

3 Q. It's just sort of an understood custom and
4 practice that the delegate should only be speaking
5 about support upon release?

6 A. Yes.

7 Q. Have you talked with an inmate about
8 whether or not an attorney can appear as a delegate?

9 A. If they would ask me that, then, yes, I
10 would have addressed that.

11 Q. And what would you have told them?

12 A. If that's who they would like to have at
13 their hearing they can do that.

14 Q. Would you have told them it would be held
15 against them?

16 A. No.

17 Q. Would you have told them that there would
18 be restrictions on what the attorney would be allowed
19 to say?

20 A. I would just tell them that they would
21 be -- their role in the hearing is to verbalize what
22 support would be available to you upon your release.

23 Q. How many of these juvenile life without
24 prehearing interviews have you conducted?

25 A. I don't know the exact number I've done.

1 But I can look at the names and tell you.

2 I believe I've done four.

3 Q. Okay. And could you just tell me who?

4 A. [REDACTED]. Sidney
5 Roberts. And [REDACTED], I believe, are the only
6 four I've done. I would have to double check that, but
7 I believe those are the only four I've done.

8 Q. Can you remember when you did Jerry
9 Goforth's interview?

10 A. I do not recall.

11 Q. Was it summer or winter?

12 A. I don't remember. I just know that he was
13 not eligible for release due to a conflicting sentence.

14 Q. What does that mean?

15 A. He had incurred an offense while he was
16 incarcerated that had mandatory requirements outside of
17 this lawsuit, or this -- the Senate bill changes.

18 Q. So what's your understanding of who, under
19 Senate Bill 590, was eligible for parole review?

20 A. You mean, like, as in the ones that have
21 served 25 years and have petitioned the court?

22 Q. That's your understanding?

23 A. Yeah. And were under the age of 18.

24 Q. At the time of the offense, correct?

25 A. Correct.

1 Q. Mr. [REDACTED] had served 25 years or more in
2 prison at the time you interviewed him?

3 A. Correct.

4 Q. But he wasn't eligible for release?

5 A. Based off of something different.

6 Q. Based off of some other sentence he had
7 received?

8 A. Correct.

9 Q. Even though he was a juvenile at the time
10 of his offense?

11 A. He still had his hearing, yes.

12 Q. He still had his hearing?

13 A. Yeah, he did.

14 Q. Why?

15 A. Because he petitioned the court and was
16 eligible for such.

17 Q. Right.

18 What's the point of having a hearing if
19 you're not even eligible for release?

20 A. That was his choice.

21 Q. When did you do Michael Vincent's hearing?

22 A. I don't recall the exact time period.

23 Q. When did you do Mr. [REDACTED]' hearing?

24 A. September of this year. He had a hearing
25 in October.

1 Q. And when did you do Sidney Roberts'
2 hearing?

3 A. Um, February of 2017. I believe his
4 hearing was in March. March of 2017 was his hearing.
5 And I did his stuff prior to that. A month prior.

6 Q. Now, you talked about the file prep. We
7 talked about some of the documents you looked at, the
8 Google, Case.net, FileBound, MO-CIS, or OPT II; do you
9 speak with the inmate's caseworker?

10 A. We do, yeah.

11 Q. You do?

12 A. That would be the collateral contacts.

13 Q. That's noted in the report?

14 A. Uh-huh.

15 Q. Do you speak with the inmate's
16 supervisor --

17 A. Yes.

18 Q. -- on the job, if they're working?

19 A. Yeah. If they have a job.

20 Q. Do you speak with any, like, COs on the
21 housing unit where the inmate lives?

22 A. Usually the offender will send us people
23 they have a rapport with and we speak to them.

24 Q. Let's talk about the prehearing worksheet
25 in more detail.

1 This is sort of the guidance -- the only
2 guidance for your prehearing interview for JL WOPers.
3 I'm just going to focus now on the highlighted bolded
4 font which seems to be specific.

5 **A. On which page?**

6 Q. The second page.

7 **A. Okay.**

8 Q. The extent of the defendant's participation
9 in the offenses. Looks like the first highlighted
10 language.

11 How do you assess the extent of the
12 defendant's participation in the crime?

13 **A. It is based off of the information that we**
14 **have available to us, as well as their**
15 **verbal recollection.**

16 Q. What information do you mean?

17 **A. What do you mean?**

18 Q. You said it's "based off of the information
19 we have?"

20 **A. Like the police reports. Stuff related to**
21 **the present offense. And then asking the offender**
22 **himself, what was your role in that offense.**

23 Q. And where do you get the police reports
24 from?

25 **A. Generally it's in FileBound or in their**

1 **classification file.**

2 Q. "Official" according to whom?

3 A. **It would be the police report. Generally**
4 **the police report is in one of our documents at our**
5 **request for such.**

6 Q. Now, the information you have when you
7 begin the file prep for these JL WOP cases, is that
8 different from a non-parolable case?

9 A. **Not necessarily no.**

10 Q. Even though some of these men and women
11 have been serving, you know, 30 years, so that their
12 materials are very old, they still have the same amount
13 and kind of material?

14 A. **Usually, yeah.**

15 Q. And would you, if necessary, submit an
16 information request to a field officer for details
17 about the offense?

18 A. **Yes. If it's not available.**

19 **(Deposition Exhibit No. 5 was marked for**
20 **identification.)**

21 BY MS. BREIHAN:

22 Q. Okay. I'll show you what I've marked as
23 Exhibit 5.

24 Is this one of those information requests
25 to a field officer.

1 **A. Yes. This is the response. Yeah.**

2 Q. And so this is one place where you would
3 get what you referred to as the official version of the
4 offense, correct?

5 **A. Yes.**

6 Q. And this is Bates-stamped 0278 through
7 0279.

8 The second factor on this worksheet is the
9 degree of the defendant's culpability in light of his
10 or her age at the time of their offense.

11 How would you assess the defendant's
12 culpability in light of their age?

13 **A. Can you be more specific?**

14 Q. Well, I assume when you sit down with an
15 inmate, and you're going through this worksheet, do you
16 go through line by line?

17 **A. Yeah. Not necessarily. A lot of times**
18 **that stuff is discussed within conversation with the**
19 **offender. And when they speak of their participation.**
20 **And then they can also -- then they generally will**
21 **speak of, like, their role in the offense. And so that**
22 **kind of is captured there.**

23 Q. What specific questions might you ask to
24 try to get a firm understanding of their culpability in
25 light of their age?

1 **A. I don't recall an exact question that I**
2 **asked.**

3 Q. The next bolded and highlighted language is
4 the defendant's age, maturity, intellectual capacity,
5 and mental and emotional health and development at the
6 time of the offense.

7 How do you assess that?

8 **A. Well, of course we ask them their age. And**
9 **then, you know, a lot of times what's discussed then**
10 **is, you know, what kind of life were they living at the**
11 **time. You know, were you living in a home with your**
12 **parents? You know. Stuff like that. Were you on any**
13 **mental health medications? And things of that nature.**

14 Q. And how do you assess the defendant's
15 intellectual capacity was at the time of the offense?

16 **A. I don't recall an exact question or series**
17 **of questions that I would use for that.**

18 Q. Are there any records that you would look
19 at that would tell you what the defendant's
20 intellectual capacity at the time of the offense was?

21 **A. Not on every single case. I have had some**
22 **of these cases where there were evaluations that were**
23 **completed that were available.**

24 Q. Now, at the end of all this you make a
25 recommendation in your report, correct?

1 **A. Uh-huh.**

2 **Q. About whether or not to grant release, and**
3 **if you deny it, how far to set the inmate back,**
4 **correct?**

5 **A. Yeah.**

6 **Q. So how does these factors impact your**
7 **ultimate recommendation?**

8 **A. I don't -- I don't know. With this**
9 **case -- with these cases, I generally look at,**
10 **obviously, their age at the time of the offense. And**
11 **through the conversation with the offender, what their**
12 **understanding was of consequence, and, you know, like**
13 **the finality of their decisions.**

14 **And then based of how they conduct**
15 **themselves now is what I would base my recommendation**
16 **on. Partially. Not totally.**

17 **Q. So how would it impact your decision if**
18 **you're dealing with an inmate who had a low-average IQ**
19 **level at the time of the offense?**

20 **A. I would think that that plays a role in it,**
21 **yes.**

22 **Q. What role?**

23 **A. I think it's a factor. And I think that**
24 **goes back to understanding the consequences for your**
25 **actions.**

1 Q. And we kind of got sidetracked; how do you
2 assess mental and emotional health at the time of the
3 offense?

4 A. Essentially what we would ask them, what
5 were you going through during that time of your life?
6 Because since we don't have that documented, we have to
7 get that information from them.

8 Q. What do you mean you don't have that
9 documented?

10 A. Meaning it's not something I can refer back
11 to on every single case so we get it from asking
12 questions.

13 Q. Do you recall in any of the four prehearing
14 interviews you conducted whether there were any expert
15 records or psychology evaluations from when those men
16 went to trial?

17 A. There were on some, yes.

18 Q. Who?

19 A. I don't recall all of them.

20 ██████████, his did. I don't know about
21 the others, though. I can't remember. It's been a
22 while.

23 Q. How many prehearing interviews do you do on
24 a weekly basis would you say?

25 A. It varies. Approximately ten to 12 a

1 **month. And that's not every month.**

2 Q. In getting your master's or bachelor's, did
3 you take any courses in psychology?

4 A. **Yes. Psychology, yes.**

5 Q. What courses did you take?

6 A. **Without having any transcripts, I don't**
7 **recall the exact courses.**

8 Q. Fair to say that you don't recall anything
9 specific from those courses either?

10 A. **No.**

11 Q. How did you assess effective familial
12 pressure or peer pressure on the defendant's actions?

13 A. **By asking him.**

14 Q. Ask him what?

15 A. **I don't have the exact questions. Again,**
16 **really, it would be if they were involved in**
17 **gang-related activities. Or if their families were**
18 **involved in such. What their role was in that. Or**
19 **that's generally what I would use.**

20 Q. What if an inmate is not competent to
21 answer them, then how would you assess them?

22 A. **I've not been met with that so I don't**
23 **know.**

24 Q. Have you received training on how to handle
25 that situation?

1 **A. No.**

2 Q. How do you assess the likelihood for
3 rehabilitation of the defendant?

4 **A. In what regard?**

5 Q. Do you consider when conducting this
6 prehearing report whether the inmate has a strong
7 likelihood for rehabilitation?

8 **A. Yes, I would think it's based off of their**
9 **program participation, and, you know, the positive**
10 **rehabilitative efforts they've made when they've been**
11 **incarcerated. Good adjustment.**

12 Q. Anything else?

13 **A. I can't think of anything specifically, but**
14 **I'm sure there's others.**

15 Q. What does good adjustment mean?

16 **A. If they have what we would consider good**
17 **institutional adjustment. Their conduct violations.**

18 Q. So number of conduct violations?

19 **A. Could be number. Severity.**

20 Q. So someone serving 25 years in prison, how
21 many conduct violations would they have to have before
22 they're no longer considered having a good adjustment?

23 **A. There's not a set number.**

24 Q. There's no standard?

25 **A. It's not like there's a chart anywhere that**

1 **says if they have 25 or less they're this or not.**

2 Q. You also mentioned program participation as
3 being the other element in assessing likelihood for
4 rehabilitation.

5 Do the programs that are offered, do they
6 vary from institution to institution?

7 **A. I believe so, yes.**

8 Q. Do you know whether there's any sort of
9 priority for certain inmates to receive trainings or
10 courses?

11 **A. I don't know that, no.**

12 Q. Are you aware of whether inmates serving
13 life without parole sentences might be sort of the
14 bottom of the list?

15 **A. I don't believe so.**

16 Q. Okay.

17 **A. I've not been told that.**

18 Q. Do you take into consideration access to
19 programming and evaluating that?

20 **A. Yes. We know there's a wait list and**
21 **things like that. Limited opportunities.**

22 Q. How do you assess subsequent growth and
23 increased maturity since the offense?

24 **A. I would have to say it's -- the majority is**
25 **done so through conversation with the offender. And,**

1 you know, you can see patterns of behavior through
2 their conduct violations and their rehabilitative
3 efforts over the course of the years that they're
4 there.

5 Q. And when you're evaluating something like
6 an inmate's institutional record, do you look at that
7 differently when that person is a juvenile offender,
8 now being an adult, but was under 18 at the time of the
9 crime, as opposed to someone who was an adult at the
10 time of their crime?

11 A. I do a little bit, yes.

12 Q. How so?

13 A. Um, I do it as more of an empathetic
14 approach. That I can at least acknowledge that coming
15 in as a juvenile with a sentence structure of life
16 without could be extremely overwhelming, and trigger
17 certain behaviors, so I understand that.

18 Q. And I'm sure --

19 A. I can say that I should. I can't say I
20 understand; I haven't been there.

21 Q. And juvenile offenders are most likely to
22 be preyed upon, correct?

23 A. I don't know that for certain, but I would
24 say it's a possibility, yes.

25 Q. Do you review any sort of medical records

1 or mental health records in preparing your prehearing
2 report?

3 A. We do, of course, have access to -- a
4 mental health memo is provided to us if they received
5 mental health services.

6 Q. So aside from a mental health memo being
7 provided to you, do you review any other mental health
8 records before doing the prehearing report?

9 A. If they're receiving current services we
10 have access to the memo they provide to us at the time
11 of the hearing.

12 If there's any record of mental health
13 services that's in the file, then, yes, we would have
14 that.

15 Q. Do you review any medical records, other
16 than mental health records, in preparing the prehearing
17 report?

18 A. We generally -- no. We have access to
19 their medications that they're prescribed. If they
20 have any illness or anything like that they generally
21 report it to us.

22 Q. Do you have access to their education
23 records?

24 A. I believe what we have is limited. But I
25 think they do have. We do have access to, like, their

1 IQ score. I don't know when that would have been done.
2 I believe they do it when they come in. I'm not a
3 hundred percent sure on that though.

4 Q. You don't conduct an IQ test in conjunction
5 with your prehearing report, do you?

6 A. No.

7 Q. So if there was an IQ score it's likely
8 from when they were committed to the Department of
9 Corrections, correct?

10 A. Or if there was something else throughout
11 their incarceration that they would have needed one for
12 something. Whether they did testing or something, I
13 don't know the circumstances of what would trigger one
14 of those to be done.

15 Q. Do you know what a SACA score is?

16 A. Yeah.

17 Q. What's that?

18 A. It's based off of -- it's a substance
19 abuse-related score that's based off of different
20 factors regarding their history of abuse with drugs and
21 alcohol.

22 Q. Is that something you calculate?

23 A. We do calculate that, yes.

24 Q. And do you calculate that before or during
25 this prehearing interview process?

1 A. I generally will review it if there's
2 something in the computer beforehand; otherwise, it's
3 conducted at the time of the hearing interview, or
4 post-hearing interview.

5 Q. So if there's --

6 A. I don't do mine before.

7 Q. Understood. So if there's a SACA already
8 in the record you don't calculate it again?

9 A. Yes, we do. I'm just saying I don't use
10 the one that's already there. If there was one in
11 there from a previous reviewer, I would recalculate it.

12 Q. And how, if at all, do you change your
13 approach during this prehearing interview if you're
14 dealing with an inmate who has a low IQ?

15 A. I would say just the form of questioning.
16 That, I've not been met with somebody that has been so
17 low functioning that it's -- needed intervention from
18 an exterior source or anything like that. So ...

19 Q. Do you check their IQ score or educational
20 records before the interview so you know whether or not
21 they're going to need assistance?

22 A. Yes. We're aware of their educational
23 level, yeah.

24 Q. And you haven't encountered an instance
25 where you felt like that outside assistance was

1 necessary?

2 **A. No.**

3 Q. And you said their educational score, are
4 you talking about the E-score?

5 **A. Their E-score. And then also through file
6 preparation, I can see when they last reported dropping
7 out of school, or getting kicked out of school, or what
8 they've completed educational-wise.**

9 Q. And how does that impact your
10 recommendation?

11 **A. The recommendation as the report?**

12 Q. Uh-huh.

13 **A. Their educational level, I would say it's a
14 factor. But I would say, yeah, it's a factor in the
15 decision. I don't know the weight of that specific
16 factor.**

17 **(Deposition Exhibit No. 6 was marked for
18 identification.)**

19 BY MS. BREIHAN:

20 Q. I'm going to hand you what I've marked as
21 Exhibit 6. It's Bates-stamped AG026844 through 2856.

22 Do you recognize this document?

23 **A. Yes.**

24 Q. What is it?

25 **A. Mr. Roberts' prehearing report.**

1 Q. This is the report that you prepared and
2 Mr. Berkbigler approved?

3 A. **That's correct.**

4 Q. Do you recall the date that you prepared
5 this report?

6 A. I would say on or around February 14th of
7 2000 -- that should say 2017.

8 Q. So it says 2014?

9 A. Yeah. It's a typo. Should be 2017. On
10 the last page. It was created 2-14-17.

11 Q. It doesn't indicate any minimum eligibility
12 date; why is that?

13 A. It is noted. Should be. The one I have is
14 dated 2-14-17. It's finalized on a different day.

15 Q. My question was why is the minimum
16 eligibility date blank?

17 A. That, I cannot answer. It should reflect
18 the 25-year minimum.

19 I was seeing if it was noted elsewhere.

20 Q. And there is no salient factor score listed
21 because Mr. Roberts is serving life without parole?

22 A. Yes.

23 Q. And, to your knowledge, his sentence hasn't
24 changed, correct?

25 A. **That's correct.**

1 Q. Why is there no guideline date or guideline
2 range indicated here?

3 A. That is generated from the salient factor
4 score.

5 Q. Again, it's because it's inapplicable?

6 A. Right. And they would have already passed
7 anyways if they were calculated. For his sentence
8 structure if they were to calculate something like that
9 those dates have already passed.

10 Q. Because he'd already served 25 years?

11 A. Yeah. That would have went beyond the
12 guideline calculations.

13 Q. So I think we marked as Exhibit 5 this
14 investigation reply from 2007 (sic) which contains a
15 summary of the circumstances of the underlying offense.

16 A. Right.

17 Q. And if you look at the first section on
18 your report, which is criminal history, and this
19 subsection of present offense, it looks like it's
20 basically copy and pasted from that investigation
21 reply; is that fair?

22 A. The majority of, yes. I generally
23 don't -- I try not to copy and paste. I'll retype it.
24 But, yeah.

25 Q. Did you do anything to fact-check the

1 summary of the underlying offense against this
2 investigation reply that's marked as Exhibit 5?

3 **A. No.**

4 Q. Did you send an updated information request
5 out to the field to get an updated summary of the
6 offense?

7 **A. No.**

8 Q. And on the third page of your report it
9 lists a co-defendant as [REDACTED]; do you see that?

10 **A. Uh-huh.**

11 Q. What's a co-defendant mean to you?

12 **A. That is another person that was a**
13 **participant in the said events.**

14 Q. And where would you have gotten
15 [REDACTED]?

16 **A. I believe Sidney Roberts gave it to me.**

17 Q. Do you recall talking to Mr. Roberts about
18 the underlying offense?

19 **A. Uh-huh. I mean, not -- it's been a while.**
20 **By reading it I can vaguely remember some things.**

21 Q. Do you recall generally it was essentially
22 a fight started by the victim one night outside of a
23 liquor store?

24 **A. Uh-huh.**

25 Q. And the fight seemed to escalate with

1 [REDACTED] eventually providing a gun and beating
2 the victim with a gun, correct?

3 A. According to our records, the witness
4 identified Roberts as the suspect who had taken the gun
5 from [REDACTED], or from [REDACTED] hand, and pulled the
6 trigger five times.

7 Q. So if you look on the second page of your
8 report, starts on 9-21-88, that paragraph.

9 A. Mm-hmm.

10 Q. It says that, "Mr. Roberts walked over to
11 an adjacent vacant lot and picked up a beer bottle.
12 And while he was doing this, [REDACTED] was beating and
13 kicking the victim, and then [REDACTED] pulled a gun from
14 his waistband."

15 A. Correct.

16 Q. Okay. Did it matter to you at all that the
17 victim was the one who initiated the altercation that
18 night?

19 A. What do you mean did it matter to me?

20 Q. Well, part of what you're doing is trying
21 to assess a number of factors, including Mr. Roberts'
22 culpability, his role in the offense, what, you know,
23 whether his youth had any impact on that. And so I
24 assume that a lot of the interview discusses the
25 circumstances of the offense, correct?

1 **A. Correct.**

2 Q. And so in doing that assessment of the
3 various factors that you're required to do under 590,
4 did you give any consideration to the fact that the
5 victim initiated the altercation that night?

6 **A. I don't know specifically what**
7 **consideration I would have given that.**

8 We aren't, you know, we don't retry the
9 case with the offender through discussion. So I don't
10 know exactly. I can't tell you what my measure of
11 consideration would have went into the victim's role in
12 that offense.

13 Q. Did you give any consideration to the fact
14 that it was [REDACTED] who provided the weapon that
15 night and not Mr. Roberts?

16 **A. Um, I can't say, again, what level of -- I**
17 **would have given to [REDACTED] being as Roberts**
18 **admitted to firing the firearm.**

19 Q. Did you give any consideration to the role
20 of the other people there that night?

21 **A. I think I was aware of the fact that, yes,**
22 **Roberts had indicated -- yes -- yes, there were others**
23 **that were present.**

24 Q. And one of the things on this worksheet
25 that's highlighted in bold is the effect of peer

1 pressure on the defendant's actions?

2 **A. Correct.**

3 Q. So I'm just trying to understand how you
4 considered and weighed, if at all, the fact there were
5 other people present, the victim initiated the
6 altercation, and David Walters was the one that
7 provided a gun that night.

8 **A. I would say, yes, it was taken into**
9 **consideration that Mr. Roberts did not have the firearm**
10 **to begin with.**

11 **Now, what, he never indicated what his**
12 **co-defendant was verbalizing to him, so I don't know**
13 **the level of verbal peer pressure that was there at the**
14 **time.**

15 Q. Did you ask Sidney about that?

16 **A. Whether or not [REDACTED] was**
17 **verbalizing instructions to him?**

18 Q. Or whether there was verbal peer pressure,
19 as you termed it?

20 **A. No. He did not mention it. Generally,**
21 **like I said, they will generally tell us.**

22 Q. And you use the words "verbal peer
23 pressure." Is there other kinds of peer pressure?

24 **A. I'm sure there is.**

25 Q. You seem to make the distinction. Can you

1 explain what the distinction is?

2 **A. Someone verbalizing him to, "Here, shoot**
3 **him."**

4 **I'm sure there is some unspoken pressures**
5 **that maybe somebody was feeling, but I don't know that**
6 **for certain.**

7 Q. And why was Senate Bill 590 instructing
8 you, and other IPOs, to consider the effective peer
9 pressure on the defendant's actions in these juvenile
10 offender cases?

11 **A. Why was it?**

12 Q. Why is that important?

13 **A. I would say because it's very likely that**
14 **peer pressure could be a factor.**

15 Q. Any other reason?

16 **A. No, not specifically, I guess. No.**

17 Q. Do you remember asking Sidney questions
18 about his home life growing up?

19 **A. Yes. I believe so.**

20 Q. Do you remember him telling you that his
21 father was verbally and physically abusive toward both
22 him and his mother?

23 **A. I will need to look at it.**

24 **(The witness reading document.)**

25 **Yes.**

1 Q. So you recall Sidney telling you that [REDACTED]
2 [REDACTED] was verbally and physically abusive and was
3 addicted to crack cocaine?

4 A. Yes.

5 Q. How did that impact your recommendation in
6 this case?

7 A. As far as a specific impact, I would say it
8 was a factor that was considered. I don't know that it
9 would have been a huge factor in my recommendation.

10 Q. Is there anything that would have been a
11 huge factor in your recommendation?

12 A. In the actual recommendation, I would
13 state -- I would think that everything that is
14 discussed throughout our interview with Mr. Roberts and
15 in the report is something that is taken into
16 consideration. And so it's difficult to say how much
17 each piece plays, as far as, like, you know, on a
18 percent of 1 to 100, how much each piece carries.

19 I would say they're all considered. And
20 you know, is part of it. But I can't say that one has
21 this much more weight over the next one versus the
22 following.

23 Q. Okay. And you indicate that Sidney was not
24 involved in a gang, correct?

25 A. That is what he told me, correct.

1 Q. Do you have reason to believe otherwise?

2 A. No.

3 Q. You do indicate he liked to go roller
4 skating with friends.

5 Are you suggesting in your report that that
6 was some sort of gang he was in?

7 A. No.

8 MR. SPILLANE: I'm going to object to the
9 argumentative form of the question.

10 You may answer.

11 BY MS. BREIHAN:

12 Q. You can answer.

13 A. Can you say it again?

14 Q. Sure.

15 You indicate in your report that
16 Sidney would go roller skating with friends.

17 Are you suggesting there that was some sort
18 of gang he was running with?

19 A. No. He reported that.

20 Q. He reported what?

21 A. He said he and some other kids from the
22 neighborhood would be a dancing group and were
23 roller skating.

24 Q. So I guess my question is, why would you
25 include that in the same sentence when you're talking

1 about gang affiliation?

2 A. That's what he reported. "Were you
3 involved in a gang?" "No." "However, he acknowledged
4 that he and some kids from the neighborhood were a
5 dancing group and would go roller skating."

6 Those were his words. Not mine.

7 Q. One of the things that you talked about was
8 considering his age at the time of the offense,
9 correct?

10 A. Mm-hmm.

11 Q. Do you consider at all that the age of the
12 person you're interviewing, at that time, at the time
13 of the interview?

14 A. You mean the fact that he's now in his
15 forties versus the 15-year-old self?

16 Q. Yeah.

17 A. I would say the thought process related to
18 the present offense, and into his institutional time,
19 yes. But if we're looking at his rehabilitative
20 efforts, then you have to look at it since the time of
21 the events.

22 Q. What about risk to re-offend, are you aware
23 of any pattern or trend in risk to re-offend and how it
24 might vary over age?

25 A. Based off my experience, I would say

1 there's really not a definite, you know, an age where,
2 you know, if someone is older they will never re-offend
3 versus someone who is younger.

4 Based on what I've experienced, there's not
5 a set -- is that what you're trying to say? Is there a
6 certain age that exists that we don't think it would
7 ever happen again?

8 Q. No. My question is, is there a trend of
9 risk to re-offend over a person's life?

10 So does a 50-year-old person released from
11 prison pose the same risk to re-offend, all else being
12 equal, as a 20-year-old being released from prison?

13 A. I can't say that.

14 Q. How old are you today?

15 A. I'm 33.

16 Q. Would you say that you were a little bit
17 more impulsive when you were 16 years old than you are
18 today?

19 A. I don't know what my impulsivity has to do
20 with this, but, no. Me personally, no, I do not.

21 Q. Okay. And you note some of the conduct
22 violations that he received during his incarceration,
23 correct?

24 A. In which section?

25 Q. Looks like in aggressivity but also in

1 institutional status.

2 **A. In the aggressivity section I would note**
3 **the offenses that were assault-related or aggressive in**
4 **nature. And then the following would be his conduct as**
5 **a whole.**

6 Q. Got it. Thank you.

7 So looks like the last conduct violation
8 you indicate that was aggressive in nature was in 2008?

9 **A. I believe so, yes.**

10 Q. So he'd gone nine years without an
11 assault-related conducted violation?

12 **A. That's correct.**

13 Q. But you indicate that his adjustment was
14 only fair. Why would that be the case?

15 **A. I indicated, "He received the following**
16 **violations overall. Based on the volume of his**
17 **violations his adjustment would be considered fair."**

18 For me, that would be taking into
19 consideration the amount, and the fact that he had not
20 had any in the eight years that you mentioned.

21 Q. Do you remember how many conduct violations
22 he had over his 28-and-a-half years in prison at the
23 time that you met with him?

24 **A. I would have written the number down, but I**
25 **don't have it noted in his hearing. I could count them**

1 **for you.**

2 Q. But the ones listed on page 6 through 9 of
3 the report, that's every single conduct violation he
4 received?

5 **A. It should be, yes.**

6 Q. I think it's 33 or 34 conduct violations.
7 Would you consider that to be a lot for
8 someone who was incarcerated for 29 years and
9 incarcerated at a young age?

10 **A. I don't know that there's an actual number,**
11 **a scale, number scale, what's a lot or not a lot. But**
12 **I've seen worse. And I've seen better.**

13 Q. That much is clear. I'm just trying to get
14 an idea, to the extent I can get inside your head, to
15 understand how you assess that. If you look at the
16 record and you say, "Oh, he's got 33 violations," what
17 does that mean to you?

18 **A. I think quantity-wise the number is not as**
19 **important as is to the nature of the violations. So I**
20 **would say that was probably what titled to fair rather**
21 **than good.**

22 Q. Does it matter at all to you the trend over
23 time of those conduct violations?

24 **A. Meaning his improvement?**

25 Q. Meaning, for example, I think nearly

1 two-thirds of every violation Sidney received was when
2 he was in his twenties, in the 1990s, when he was much
3 younger, when prison was a different place; did that
4 make any difference to you?

5 A. I would say that he had -- yes, he had
6 violations in the '90s. But his violations -- I mean,
7 they were similar in the two-thousands as they were in
8 the '90s.

9 Q. What do you mean they were similar?

10 A. The violations were similar in nature, up
11 to 2008, as they were in the 1990s. So I don't know
12 that that would be -- yes, he had violations early on.
13 I understand that. But those behaviors continued up
14 until much more recent than the 1990s.

15 Q. So how long, in your opinion, would
16 somebody have to go without an assault-based conduct
17 violation in order to have a good adjustment?

18 A. Um, I think I acknowledge that his
19 adjustment was improved. And, again, you know, I noted
20 in my report that the reason that I considered it to be
21 fair is because of the nature of the violations.

22 And he acknowledged he had poor coping
23 skills at the time that he was receiving these
24 violations.

25 Q. Yeah. I understand the part of the nature

1 of the violations. But you already testified the last
2 time he received an assault was nine years before your
3 prehearing interview, correct?

4 **A. Yes.**

5 Q. So how long would he have to go without one
6 of those assault-based violations in order to have
7 better than fair institutional adjustment?

8 **A. I don't know that there's a time period on**
9 **that. Again, there's not a scale for that. Or a**
10 **chart.**

11 Q. On page nine you talk about Sidney working
12 in the clothing factory, and prior to that in food
13 service, correct?

14 **A. Mm-hmm.**

15 Q. Do you recall speaking with Sidney's
16 supervisor at the clothing factory?

17 **A. On page 10, it indicates it included**
18 **"multiple letters of support from various staff**
19 **members. The majority were from his work supervisor**
20 **noting his employability and hard work."**

21 **If he provided letters to us, I may not**
22 **have had physical phone notification to them if he**
23 **submitted support letters to us.**

24 Q. So do you recall speaking with Sidney's
25 supervisor at the clothing factory?

1 **A. Not via phone. I could have. I don't**
2 **recall though.**

3 Q. Do you recall speaking with Sidney's
4 supervisors in food service?

5 **A. I do not recall speaking to them.**

6 Q. And then in the education section it says
7 E-1. What does E-1 indicate?

8 **A. He is educationally prepared.**

9 Q. What does that mean?

10 **A. He has a high school equivalency or**
11 **something greater than such.**

12 Q. It doesn't indicate his IQ level, does it?

13 **A. No.**

14 Q. It does indicate he completed the tenth
15 grade?

16 **A. That's what he reported to me, yes.**

17 Q. Did you check the records to confirm that?

18 **A. If we had them available to us.**

19 Q. Do you recall if you checked the records?

20 **A. I cannot recall.**

21 Q. Do you recall seeing any diagnostic report
22 that was completed around the time that Sidney was
23 first committed to the Department of Corrections in the
24 80's?

25 **A. It's very possible, but I don't recall**

1 **specifically.**

2 Q. Do you recall seeing a report that
3 indicated that functionally, when he was committed to
4 the Department of Corrections, that he was at a
5 sixth-grade level?

6 A. **I don't recall.**

7 Q. Would that have any impact in your
8 recommendation and report?

9 A. **Again, it's another factor that would be**
10 **part of the record, yes.**

11 Q. Would it have any impact in your
12 recommendation in your report?

13 A. **Specifically, I can't state what -- I can't**
14 **state how much of an impact it would have made, being**
15 **he is educationally prepared at this point. It would**
16 **not be considered a liability for future.**

17 Q. Well, there's sort of two things going on,
18 right? I mean, you're doing an assessment as to the
19 person you see before you that day, correct?

20 A. **Right.**

21 Q. But in these hearings you're also doing an
22 assessment of what they were like 25 or 30 years ago,
23 too, correct?

24 A. **Right.**

25 Q. And so part of that is evaluating, among

1 many other their things, their intellectual capacity at
2 the time of the offense, right?

3 **A. Right.**

4 Q. And so if he was not in school, had just
5 completed tenth grade, and was at a sixth-grade
6 comprehension level, how would you weigh that factor in
7 assessing his intellectual capacity at the time of the
8 offense?

9 **A. It may have been in the report just in that**
10 **specific location.**

11 Q. What kind of evaluation would you give it,
12 if you saw that information, the sixth-grade
13 comprehension level?

14 What's your thought process as far as
15 assessing the circumstances of the offense in light of
16 that information?

17 **A. I mean, if we're talking about the**
18 **educational section of this report, then we may or may**
19 **not get into that part of it. This is more of a layout**
20 **of his educational background, not what you're speaking**
21 **of.**

22 Q. So where in this report, then, does it
23 indicate an assessment of his intellectual capacity at
24 the time of the underlying offense?

25 **A. It would have to be through discussion with**

1 **him. And in the assessment recommendations sections.**

2 **My report looks different than yours.**

3 **Can you state your question again?**

4 MS. BREIHAN: Can you read it back, please.

5 (Whereupon, the last answer was read back
6 by the reporter.)

7 THE WITNESS: I don't know that it states
8 specifically, without sitting here reading the actual
9 report word for word.

10 MR. SPILLANE: Can we go off the record
11 before you ask another question?

12 (An off-the-record discussion was held.)

13 BY MS. BREIHAN:

14 Q. So in the report it doesn't reference his
15 intellectual capacity at the time of the offense?

16 A. Other than what he would have reported to
17 me, no.

18 Q. Which is in this education section on page
19 nine of the report?

20 A. Or when we talked about the social stuff
21 with his family, and things of that nature, his
22 involvement with extra-curriculars.

23 Q. So let's go to the assessments
24 recommendation the very bottom of page 11, AG08254.

25 You indicate that this Sidney's first

1 felony incarceration, correct?

2 **A. Yes.**

3 Q. A 45-year-old man. He was sentenced for an
4 offense that he committed when he was 17 years old,
5 correct?

6 **A. Mm-hmm.**

7 Q. He accepts full responsibility for the
8 offense, correct?

9 **A. Yes.**

10 Q. And he acknowledges knowing right from
11 wrong; however, he said he never once took into
12 consideration what the consequences of his actions
13 would be.

14 Why were you noting that? Why was that of
15 importance to you?

16 **A. He acknowledged that. That's why.**

17 Q. So you just wrote down everything that he
18 said?

19 **A. As much as -- yeah, when discussing that.**
20 **He stated that he knew right from wrong. But, again,**
21 **he said that, you know, when you're 17, he didn't**
22 **understand the full consequences of his actions.**

23 **Those would be his --**

24 Q. This is the assessment and recommendation
25 by you, correct?

1 **A. Right.**

2 Q. So I assume that some of what he said
3 you're putting through a filter to figure out what's
4 important for making your recommendation, correct?

5 **A. I would say that's fair.**

6 Q. So it's safe to assume then, that this
7 observation, that while Sidney might not have known
8 right from wrong, he didn't take into account the
9 consequences of his actions. That was important to you
10 in some way, correct?

11 **A. Yes.**

12 Q. What role did it play in your decision?
13 How much weight did you give that?

14 **A. I would say that's a pretty significant**
15 **piece of it.**

16 Q. And can you elaborate? Does it weight in
17 favor of giving him an outdate or weigh in giving him a
18 setback?

19 **A. I think it's a piece of it. I can't say**
20 **that that solely would be something that would, yes,**
21 **absolute, or, no, absolute. I can't say that.**

22 Q. I'm not asking you to. I don't think that
23 your testimony here today would indicate that that was
24 the deciding factor.

25 But if you had a scale, and one side of the

1 scale was, "I'm going to give him a recommendation for
2 release," and the other side was "I'm going to
3 recommend for a reconsideration hearing," and you have
4 a little chunk that represents that fact, that he knew
5 right from wrong, but didn't think about the
6 consequences, what side of the scale would you put that
7 on?

8 **A. That would lean more toward taking into**
9 **consideration that information. I can't say that it**
10 **would be -- I can't put an exact value on it, other**
11 **than it is something that I did take into consideration**
12 **when making my recommendation.**

13 **Q. But you can't say today how you took it**
14 **into consideration?**

15 **A. What -- I feel like you're wanting me to**
16 **say that that has to be, you know, whatever titled the**
17 **scale. And I can't say absolutely that because he**
18 **acknowledged that he may not have understood the**
19 **consequences, that that was an absolute one way or the**
20 **other.**

21 **Q. I'm not asking you to say how it tilted the**
22 **scale. I mean, you thought about this.**

23 **A. It was a factor, yes.**

24 **Q. Right.**

25 So was it a factor in favor of his release?

1 Or in favor of a reconsideration?

2 A. It wasn't a factor that acted alone.

3 Q. I understand that. Part of the formula in
4 your head, right?

5 A. Right.

6 Q. So did it weight in favor of
7 reconsideration, or in favor of release, understanding
8 it was not the only factor for your decision and
9 understanding it did not operate alone?

10 A. Then I don't think that that question
11 applies to that then.

12 Q. So how did you come to your decision about
13 whether to recommend a reconsideration or release?

14 A. Whenever I would go into a decision-making
15 process, my assessment is just my professional
16 assessment. It is just a -- taking all of these
17 factors into consideration. And providing it to the
18 parole board so they can make an informed decision.

19 So it is a factor, but I also then have to
20 take into consideration everything else that's part of
21 the file into consideration.

22 Q. Right.

23 A. So it is important, yes. But, I mean, I
24 feel like you're wanting me to say that it went one way
25 versus the other. But I can't say that that piece was

1 the tilt one way or the other.

2 It's not a very clear question. I
3 understand what you're saying. It's not a simple, I
4 guess, as that, one way versus the other.

5 Q. When you're making your professional
6 assessment, do you make a pro and con list in your
7 head, or on paper, "Well, he has this going for him,
8 but he's got risks and maybe he shouldn't be released?"

9 A. Yes.

10 Q. So you sort of compartmentalize in your
11 head factors that you glean from your interview, from
12 your preparation for the interview, factors that might
13 weigh in favor of giving him an outdate, he's taken a
14 program, or has been without a conduct violation for
15 eight years?

16 A. Okay.

17 Q. And you might consider factors that might
18 weigh in favor of giving him a reconsideration, what
19 you might have termed as fair, and not good,
20 institutional adjustment, correct?

21 A. Okay.

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay. I'm trying to get an idea of the
25 pros and cons list, where, the fact that he as a kid

1 didn't take into consideration the consequences of his
2 actions, where it lands on the pros and cons list.

3 **A. I would say the fact that he can**
4 **acknowledge his responsibility in the offense, that**
5 **would be a pro, yes.**

6 Q. And then you talk about the -- that he
7 appears to have lived a life as a person with no hope
8 of a future release.

9 Do you see that?

10 **A. Mm-hmm.**

11 Q. What does that mean?

12 **A. That would come from my conversation with**
13 **Mr. Roberts. Like we spoke previously about that**
14 **feeling of being young and coming into the institution**
15 **with a life without parole sentence. So that sentence**
16 **would have come from my conversation with him regarding**
17 **how he felt when he came into prison.**

18 Q. And you indicate that Roberts shared he
19 felt he needed to carry a weapon sometimes for
20 protection, correct?

21 **A. He reported that, yes.**

22 Q. Did that have any impact in how you viewed
23 the conduct violations?

24 **A. That can be interpreted two ways. I would**
25 **think you'd have to assess his needs for protection,**

1 what was -- why did he feel he needed protection.

2 Q. Did you ask him about that?

3 A. I did. I believe I noted it. He
4 attributed poor coping skills.

5 And then he then also reported that if he
6 felt things were off or things felt off he would carry
7 a weapon.

8 So, I mean, also, you know, the
9 institutional rules indicate that you're not to have
10 dangerous contraband or weapons regardless of what was
11 going on with him personally at that time.

12 Q. I understand. I'm just wondering if there
13 were any mitigating factors that you might have
14 considered. "Oh, he's small in stature and he was a
15 kid." And so maybe he was more prone to harassment, or
16 assault, or to be attacked by other inmates.

17 Would that mitigate at all the fact that he
18 was carrying a weapon from time to time?

19 A. Perhaps if they had occurred when he was
20 very young or early on in his sentence structure. But
21 this continued for Mr. Roberts. It was a pattern of
22 behavior for him. This wasn't something that just
23 happened in his first few years of incarceration.

24 In fact, he didn't get a violation for a
25 weapons offense until 2000. So that would not apply in

1 his case. He could have had weapons prior to such, but
2 it was not documented. So the theory when he was
3 coming in and having those weapons, I mean, his
4 violation for a homemade weapon didn't occur until
5 2000. He's much older at that time.

6 Q. How old was he in 2000?

7 A. I'd have to look. I don't have that off
8 the top of my head. His demographics information is
9 not on the hearing itself. It's on the offender face
10 sheet.

11 Q. You also refer to this diagnostic center
12 report completed in December of 1989, which indicates
13 by whomever authored the report, that "Sidney appears
14 to be an immature young man, fairly self-centered, who
15 showed no remorse for his actions and denied being
16 guilty of the underlying offense."

17 Is that report something, and that opinion
18 that I just read, something that you considered and
19 weighed in making are your recommendation?

20 A. I would say it's a part of it, noting what
21 his behaviors or state of mind was when he came in.
22 The report would have been something that occurred at
23 the time of his reception. So I would think that would
24 be a correlation to when he first came in.

25 So I would say, yes, that's part of it, to

3 Q. And you indicated elsewhere that he did
4 show remorse for his actions?

6 Q. And he did admit guilt?

8 Q. Did he still appear to be a self-centered
9 immature young man?

10 A. I don't recall specifically, but, no, it
11 doesn't stand out to me that he had any ...

12 Q. [REDACTED] [REDACTED]

☐ ☐ ☐

■ **■** **■**

[REDACTED]

[REDACTED]

■ [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED].

22

Q. And the felony charge is the possession of

23

drugs in a correctional facility in 1996, correct?

24

A. Correct.

25

Q. And he completed that sentence in 2001,

1 correct?

2 **A. Correct.**

3 Q. Do you recall the circumstances of that
4 offense?

5 **A. I believe it was -- Roberts produced**
6 **through a bowel movement five balloons containing**
7 **marijuana.**

8 Q. You're reading from the report?

9 **A. Yeah.**

10 Q. Do you remember why he had the marijuana on
11 him?

12 **A. It would have only been what he reported to**
13 **me.**

14 Q. To support his family, correct?

15 **A. That may have been. If it's in the report,**
16 **that's what he told me then.**

17 Q. Did you tell Mr. Roberts what your
18 recommendation was?

19 **A. No.**

20 Q. Why not?

21 **A. We are not required to give our**
22 **recommendations. It's a security issue.**

23 Q. Are you allowed to give them a
24 recommendation?

25 **A. I don't. We don't practice that.**

1 Q. Why do you not practice that? Is there a
2 written policy against providing the recommendation to
3 the inmate?

4 **A. I don't know that for certain.**

5 Q. Did Mr. Roberts ask what your
6 recommendation was?

7 **A. He may have. I don't recall.**

8 Q. Do you give a copy of the prehearing report
9 to the inmate?

10 **A. No.**

11 Q. Why not?

12 **A. Our policy does not allow that.**

13 Q. There's a written policy?

14 **A. I believe so.**

15 Q. Did Mr. Roberts ever ask --

16 MS. BREIHAN: I'm going to suggest we stop.
17 And I still have questions, but I think it may go just
18 a little over 15 minutes. For the sake of the
19 reporter's fingers and brain, and my brain, we're going
20 to stop.

21 Are you good with that, ma'am?

22 THE WITNESS: Sure.

23 (Volume I concluded.)

24

25

1 CERTIFICATE OF REPORTER

2
3 I, Kim D. Murphy, Certified Court Reporter,
4 for the State of Missouri, do hereby certify that the
5 witness whose testimony appears in the foregoing
6 deposition was duly sworn by me; that the testimony of
7 said witness was taken by me to the best of my ability
8 and thereafter reduced to typewriting under my
9 direction; that I am neither counsel for, related to,
10 nor employed by any of the parties to the action in
11 which this deposition was taken, and further that I am
12 not a relative or employee of any attorney or counsel
13 employed by the parties thereto, nor financially or
14 otherwise interested in the outcome of the action.

15
16
17
18
19 _____
20 Kim D. Murphy, CCR
21
22
23
24
25